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SUBJECT: POLITICS AND RELIGION IN TANZANIA: REVIVED DEBATE  
ON ISLAMIC KADHI COURTS

1. (U) Summary. This is the first of two cables on political issues of a religious nature in Tanzania. This cable covers the question of establishing Islamic (kadhi) courts on mainland Tanzania, while septel will address the debate over Tanzanian membership in the Organization of the Islamic Conference (OIC). The kadhi court controversy pits Muslim religious leaders and some political figures, who argue for the courts on the basis of tradition, against Christian groups and more secular opponents, who fear a violation of constitutionally guaranteed government neutrality among religions. The debate poses a particular problem for the ruling CCM party, which must balance the competition for voters in Muslim Zanzibar with overall party solidarity in the more secular and multi-religious mainland. End summary.

Background: The Zanzibar Way

2. (U) Unlike mainland Tanzania's secular legal system, semi-autonomous Zanzibar has a parallel system of "kadhi courts." Kadhi courts only hold authority over Muslims and decide matters on divorce, child custody, inheritance and related matters involving customary Islamic law. The Kadhi, who is the senior Islamic scholar responsible for interpreting the Koran, is approved by the President and recognized as a judge. There is also a Kadhi Court of Appeal.

3. (U) Issues involving criminal cases, civil cases of a customary nature or cases involving non-Muslims are heard by the Zanzibar Primary Court, which also has a court of appeal. However, litigants sometimes bring cases to both courts, in which case the High Court of Zanzibar is the supreme arbiter and last court of appeal (except on constitutional or Union issues, which would go to higher mainland courts). The majority of cases are handled at the lowest level. In Zanzibar, kadhi court judgments and subpoenas are enforced by Zanzibar's (secular) police, as with any other court.

4. (U) One main difference between the mainland and Zanzibar on legal issues is that even in the Zanzibar civil courts, most, if not all, of the judges are Muslim, reflecting the 98 percent Muslim population of Zanzibar. The religious affiliation of judges on the mainland is more diverse. Kadhi courts were abolished on the mainland in 1963; after the 1964 union that formed Tanzania, the kadhi courts continued on Zanzibar only.

5. (U) The debate over establishment of mainland kadhi courts has simmered over time and occasionally boiled over. The ruling CCM, in its 2005 election manifesto, included a promise to work towards establishing the courts. In 2006, the leaders of BAKWATA, the Muslim Council of Tanzania that governs Islamic matters on the mainland, issued a new call for nationwide kadhi courts, setting off a heated debate among Muslim leaders, Catholic bishops, and other Christian groups. The debate revived during the most recent Parliamentary budget session, when the Minister for Justice noted the government was studying a report on the issue.

Arguing the case

6. (U) Proponents of the establishment of kadhi courts on the mainland focus on several key points. First, they argue that the kadhi courts should not be seen as novel, since they existed on the mainland before independence. Proponents also claim that the kadhi court system does not necessarily imply a rejection of secularism. The Mufti of Zanzibar (a political appointee), Harith Khelef Kharmis, insists that "Islamic affairs" are separated from "judicial affairs" on the island. Proponents also note the successful implementation of a kadhi court system in several neighboring countries, notably Kenya, Rwanda, and to some degree, Uganda.

7. (SBU) Finally, proponents emphasize the integral aspect of the kadhi court system to the Muslim faith, stressing that the courts would apply only to Muslims. Fatma Maghimbi, spokesperson for the opposition Civic United Front (CUF) and an MP from Pemba, claimed in Parliament that, "the

non-existence of kadhi courts is a constraint in solving basic issues concerning Muslims." Many who advocate for the kadhi court,s extension to the mainland view the court as a system created by the community to fill a failure of the government of Tanzania in civil matters. Juma Mikidadi, Islamic Studies Professor at the Muslim University of

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Morogoro, recently told Poloff "we need judges well-versed in Islamic law to ensure proper treatment for all."

18. (U) Opponents of a kadhi court system on the mainland argue that by funding an Islamic institution, the government would compromise its secular status, which is established in the Constitution. Speaking in Parliament, CCM MP Florence Kyendesya said "issues of a (directly) religious nature should be left to respective religious institutions to set up appropriate mechanisms." Opponents add that establishing a kadhi court system on the mainland would require amending the Constitution, a step not to be taken lightly, as well as drafting implementing legislation. They also point out that because the Tanzanian court system is financed by taxpayers, it would be inequitable for all Tanzanian citizens to finance a "one religion" court system used by and benefiting one subgroup of the population.

19. (U) Within the Christian religious establishment, opponents of the kadhi court, such as Catholic Bishop Method Kilaini, have characterized the proposal as a steady "creep" towards Islamic law. Christian religious leaders note that Muslim law often directly contravenes existing Tanzanian legal principles and question how conflicts would be resolved. Some fear that the creation of a kadhi court system on the mainland would create a forum in which various Muslim groups will battle among themselves for control of the faithful, perhaps upsetting the social order in the process, as well as contributing to greater rifts between Muslim and Christian groups. Zitto Kabwe, MP for opposition Chadema, called on his fellow MPs to deliberate calmly about the issue, so as not to "see the nation divided." Other opponents have framed the issue around gender, asserting that women do not receive fair treatment in the kadhi court system, which consequently creates a direct conflict with the Constitution,s guarantee of gender equality.

The Political Angle: A problem for CCM

10. (U) MPs in favor of a mainland kadhi court argue that CCM must fulfill the commitments of its 2005 manifesto. They add that because the platform was written at a time when the President, Prime Minister, and CCM Secretary General were all Christians, President Kikwete, a Muslim, cannot be seen as pushing an Islamic agenda. Kikwete himself has attempted to play down the kadhi court issue, even making a point of attributing the idea to the (Christian) leader of a small opposition party, the Tanzania Labor Party. On the occasionsQhen he has spoken publicly about the issue, Kikwete has urged patience to allow further consideration. Some analysts have claimed that CCM picked up on the kadhi court idea during the electoral campaign to undercut the CUF's strong Islamic following.

11. (SBU) Comment: Kikwete and CCM are pressed on multiple sides by the kadhi court issue. If the Union government were to start the process of setting up the courts, it would certainly raise interfaith tensions on the mainland and heighten divisions within CCM. However, inaction gives CUF a wedge issue against CCM, particularly on Zanzibar. While CCM faces no serious threat to its dominance in the national government, the political divide on Zanzibar is such that overt CUF appeals on Muslim issues could be among the issues that help sway the 2010 election. End Comment.

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